IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Appeal No.741 of 2001
(Old No. 1985/1984)

Date of decision :-25.7.2005

A.F.R. (Approved for reporting)

~~Not approved for reporting~~

Date 25.7.2005 Initials of Judge

Note :- Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

CRIMINAL APPEAL NO.741 of 2001
(Old No. 1985 of 1984)

1. Nasir Ahmad
   S/o Shri Khalil Ahamad
   R/o village Indra Nagar
   P.S. Haldwani
   District Nainital
2. Ishrat Ali
   R/o village Nai Basti
   P.S. Haldwani
   District Nainital
   {Died during the pendency of appeal}

.....Appellant

Versus

State of Uttaranchal .....Respondent

Date :- 25th July, 2005

Mr. Zafar Siddique learned counsel for the appellants
Sri G. S. Sandhu and Sri Rajeev Mohan learned A.G.A.

Hon'ble J.C.S. Rawat, J.

1. This a criminal appeal against the judgment and order dated 30.6.1984 passed by Sri V.S. Bajpai, the then Addl. Sessions Judge(Special Judge), Nainital in S.T. No.173/1983 State Vs. Nazir Ahmad & Ishrat Ali, whereby the appellant No.1-Nasir Ahmad and appellant No.2-Ishrat Ali were convicted and sentenced to undergo R.I. for a period of two years and to pay a fine of Rs.500 under section 326 I.P.C. & 324/34 I.P.C. respectively. In default of payment of fine, the appellants would further undergo R.I. for a period of six months.

2. The prosecution case in a nutshell is that on 4.4.1982 at about 1PM the injured-Om Prakash was going on a cycle from his shop to his house. When he reached near the Masjid in Mohalla Bansphoran, the

front wheel on his cycle dashed the foot of the appellant-Nasir Ahmad. The appellant-Nasir Ahmad then pulled the complainant down from the cycle and started hurling abuses to him. The appellant-Ishrat Ali caught hold of the hands of the injured from back and the appellant-Nasir Ahmad gave him a knife blow near the chest, due to which the complainant fell down on the ground and became unconscious. Rajendra, Ramesh Chandra and Babli had also reached there. Then, the injured- Om Prakash was taken to Civil Hospital, Kashipur by the brother of the injured i.e. Ramesh Chandra. Thereafter, the complainant got written a report (Ex.ka.2). The FIR (Ex.ka.5) was lodged at the police station and entry to that effect was made in the G.D. (Ex.ka.6). The investigation was entrusted to R.P. Binjola-S.I. (PW-5), who prepared the site plan (Ex.ka.3) and recorded the statements of the witnesses. The investigation was taken up as usual which culminated into the submission of the chargesheet(Ex.ka.4).

3. Charges were framed under section 307 I.P.C. and 307/34 IPC against the Nasir Ahmad and Ishrat Ali respectively. The appellants denied the charges and claimed the trial.

4. The prosecution in support of its case examined five witnesses. Out of these witnesses, Dr. J. C. Arora (PW-1), the Medical Officer, Civil Hospital, Kashipur examined the injured on 4.4.1982 at 1PM. The doctor found the following injury on the person of injured:-

(i) Incised wound 2.5cm x 1cm x depth not probed over right side of chest 5cm away from midline 8.5cm below right nipple.

Shape shown in figure. Transverse. Blood was oozing from the wound.

The injury was kept under observation and the duration of the injury was fresh. The doctor opined that the injury could have been caused by a sharp object.

5. Om Prakash (PW-2) was the victim-injured and he supported the prosecution story as stated above. Ramesh Chandra (PW-3) and Babli (PW-4) were the eye-witnesses of the incident. R.P. Binjola (PW-5), the Investigating Officer proved the site plan (Ex.ka.3) and submitted the chargesheet(Ex.ka.4).

6. In the statement recorded u/s 313 Cr.P.C. the appellants denied the prosecution case and stated that they have been falsely implicated in this case.

7. The learned trail court after appraisal of the evidence on record found the appellants guilty u/s 324 & 324/34 IPC and convicted and sentenced the appellants as mentioned above.

8. I have heard the learned counsel for the parties and perused the evidence on record.

9. The prosecution in support of its case produced the injured-Om Prakash in the evidence who had supported the prosecution and deposed as indicated in para 2 of the judgment. PW3-Ramesh Chandra and PW4-Babli were the eye-witnesses of the incident. They had corroborated the evidence of Om Prakash PW2-injured.

10- It is pertinent to mention here that the appellant No.2- Ishrat Ali has died during the pendency of the appeal. As such, the appeal stands abated against him.

11. The learned counsel for the appellant contended that the appellant was neither named in the FIR, nor named in the statements recorded under section 161 Cr.P.C. and he was not known to the witnesses at all prior to the incident. He was identified for the first time before the court below during the evidence as one of the accused, who caused the injury to the injured and participated in the offence. As such, the evidence cannot be relied upon. The learned A.G.A. refuted the contention and contended that the injured has himself admitted in his statement recorded under section 161 Cr.P.C. that he knew the appellant earlier. He further stated that there was a quarrel between them in the 'Chaiti Mela' with regard to the money. The learned A.G.A. refuted the contention and contended that Om Prakash has categorically stated in his evidence that the accused used to visit in his locality and he knew them from before. It is a well settled position of law that the substantive evidence of a witness is the statement in court but as a rule of prudence, earlier identification proceedings are held in order to corroborate the testimony of a witness given in the court as regards the identify of the accused who is not known to him from before. The effect of identification parade has been recently examined by the three Hon'ble Judges Bench in **Malkhansingh & others Vs. State of M.P. 2003 SCC(Cri) p/1247,** in which the Hon'ble Supreme Court has held that:-

> *"7. It is trite to say that the substantive evidence is the evidence of identification in*

court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by section 162 Cr.P.C. failure to hold a test identification in court. The weight to be

attached to such identification should be a matter for the courts of fact. In appropriate cases, it may accept the evidence of identification even without insisting on corroboration.

10. It is no doubt true that much evidentiary value cannot be attached to the identification on the accused in court where identifying witness is a total stranger who had just a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in court.

16. It is well settled that the substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine. In the instant case, the courts below have concurrently found that the evidence of the prosecutrix to be reliable and, therefore, there was no need for the corroboration of her evidence in court as she was found to be implicitly reliable. We find no error in the reasoning of the courts below. From the facts of the case, it is quite apparent that the prosecutrix did not even know the appellants and did not made any effort to falsely implicate them by naming them at any stage. The crime was perpetrated in broad daylight.

The prosecutrix had sufficient opportunity to observed the features of the appellants who raped her on after the other. Before the rape was committed, she was again intimidated by the appellants. After the rape was committed, she was again threatened and intimidated by them. All this must have taken time. ***This is not a case where the identifying witness had only a fleeting glimpse of the appellants on a dark night.*** *She also had a reason to remember their faces as they had committed a heinous offence and put her to shame. She had, therefore, abundant opportunity to notice their features. In fact on account of her traumatic and tragic experience, the faces of the appellants must have got imprinted in her memory, and there was no chance of her making a mistake about her identify. The occurrence took place on 4.3.1992 and she deposed in court on 27.8.1992. The prosecutrix appears to be a witness on whom implicit reliance can be placed and there is no reason why she should falsely identify the appellants as the perpetrators of the crime if they had no actually committed the offence. In these circumstances if the courts below have concurrently held that the identification of the appellants by the prosecutrix in court does not require further corroboration, we find no reason to interfere with the finding recorded by the courts below after an appreciation of the evidence on record."*

12. It may be pointed out that in the abovenoted case, it was the prosecution which did not hold a prior test identification parade and for this lapse the accused were not responsible in any manner as they had never declined to attend or participate in a test identification parade. However, in the instant case, the complainant-injured appears to be a witness on whom implicit reliance can be placed and there is no reason why he will falsely implicate the appellants as the perpetrators of the crime if they had not actually committed the offence, coupled with other circumstances of the case. what is authority holds is that there is no straitjacket formula that in a case where the accused is not named in the FIR or in the statement under section 161 Cr.P.C. or is not otherwise known from before, the testimony of a witness for the first time in court, without a prior test identification parade, becomes valueless. The testimony of such a witness has to be judged like that of any other witness having regard to the facts and circumstances of the case and also keeping in view the fact that prior identification proceedings had not been held. So far as Ramesh Chandra (PW-3) and Babli (PW-4) are concerned, they were residing in the same locality. Both have same status in the locality and there is no reason why they will false implicate the appellants. The incident took place in the daylight i.e. 1PM. The appellant- Nasir Ahmad pulled the complainant down from the cycle and started hurling abuses to him. The appellant- Ishrat Ali caught hold of the hands of the injured from back and the appellant-Nasir Ahmad gave him a knife blow. Witnesses also reached at the spot and they were very close to the place of incident. They had ample opportunity to identify the appellants. The manner in which the crime

was committed and the manner in which the appellants escaped from the place of incident clearly shows that the aforesaid eyewitnesses got full opportunity to see the identify the accused. It is also in the evidence of injured that he knew the appellant earlier. This fact was also stated by the injured during his statement recorded under section 161 Cr.P.C. It is also in the evidence that there was a quarrel between the complainant and the appellant in 'Chaiti Mela' with regard to the payment in the shop of complainant. It is also in the evidence that the appellant used to visit in his locality and he knew from before. This evidence is cogent and credible. In these circumstances, there is no reason at all for not placing reliance upon their testimony. Therefore, the contention of the learned counsel for the appellants has no force.

13. The learned counsel for the appellants further contended that there are major contradictions in the testimony of the witnesses. First contradiction pointed out was that the witnesses have stated that the accused persons have caused the injury on the person of injured by kicks and fists. It was also pointed out that Babli (PW-4) has stated that the injured was dragged on the surface. Ramesh Chandra (PW-3) has stated that he tried to compromise the matter and the incident took place at about 12PM. Ramesh Chandra (PW-3) has stated that the complainant sustained injuries on his head and blood was oozing from his head. It was also pointed out that there were certain omissions in the FIR. Ramesh Chandra (PW-3) has not incorporated the fact in the FIR that the knife injury was caused from the back and he was sitting at Atta Chakki. The learned A.G.A. refuted the contention and

contended that these are the minor contradictions. The observation differs from person to person and what one may notice, another may not. At object or moment might emboss its imagine on one person's mind whereas it might go unnoticed on the part of another. By and large the people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorded. The witness cannot be expected to pose a photographic memory and to recall the details of an incident. Ordinarily if so happens that witness is overtaken by the events, the witness could not have anticipated the occurrence, which so after has an element of surprise. Ordinarily a witness cannot be expected to recall accurately the sequences of events, which took place in a rapid succession or in a short time of span. A witness is likely to get confused or mixed up when interrogated, later on. As the person who has witnessed an incident, like the present one reacts in his own way. Some are stunned, some become speechless and some stand uprooted from the spot. Thus every individual reacts on his own way. There is no set of rules of natural reaction. Even in ordinary cases the witnesses are not inclined to depose or their evidence is not found to be credible by the Courts for many fold-reasons.

14. If the contradictions are there it do not affect the prosecution story. The courts should not take into account such discrepancies, which are bound to come on the testimonies. The discrepancies as pointed out by the learned counsel for the appellants are not of such consequences, which can be named as boulders. It has

been held in **Leela Ram Vs. State of Haryana 2000 SCC (Cri) p/222** that the High Court is within its jurisdiction being the first appellate court to reappraise the evidence, but he discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contractions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. It has also been held that the Court should have to bear in mind that different witnesses reacts differently under different situations.

15. The FIR is not the encyclopedia of each and every detail, which is taken place at the place of incident. If the genesis of the incident has been incorporated in the FIR, it is sufficient for the police to start the investigation. The Hon'ble Apex Court has held in **Bhagwan Singh and other Vs. State of M.P. 2002 SCC (Cri) p/736:-**

> *"13. We also do not find any substance in the submission of the learned counsel for the appellants that statement of Kiran (PW7) should not be given any weight because her name is not mentioned in the FIR. There is no requirement of law for mentioning the*

names of all the witnesses in the FIR, the object of which is only of set the criminal law in motion. Kiran PW7 herself was injured and being the niece of Hari Ram (deceased), had no reason to involve innocent persons in the commission of the crime. Merely because PWs 7, 12 and 22 happen to be the relations of the deceased, cannot be made a ground to discard their evidence. In the circumstances of the case, the High Court has rightly found the aforesaid witnesses to be natural witnesses of the occurrence."

16. In view of the above discussion, the testimony cannot be discarded only on the ground of minor embellishments and exaggerations. Om Prakash (PW2) has admitted in his cross-examination that he sustained the injury by kicks and fists. It depends how the injuries were caused. The learned counsel for the appellants contended that body of the injured was dragged on the surface and as such there should be such injuries on the face of the injured. The learned A.G.A. refuted the contention and contended that shape & size of the injury depends upon the position, in which the injured was dragged and how it was caused. Minor embellishment, there may be, but variations by reason therefore should not render the evidence of eyewitnesses unbelievable. It has been held in **Alla China Apparao Vs. State of A.P. 2002(8) SCC p/440** that:-

"8. Learned counsel then submitted that according to the evidence of PW1 to 4 the deceased was dragged to some distance and the latter portion of the incident had taken

place thereafter, but curiously enough neither any dragging marks were found at the place of occurrence not was any injury found on the person of the deceased as a result of dragging. While considering this submission, the trial court observed that:-It is true that PW1 to 4 unanimously deposed that the deceased was dragged to a dilapidated wall and thereafter all accused inflicted injuries and major portion of the incident took place there itself. But, it is also pertinent to note the distance to which the accused dragged the deceased. It was elicited in the cross-examination of PW1 and other witnesses that the deceased was dragged to 4 to 5 yards. PW1 says the distance as 5 to 6 yards while PW2 to 3 say it as three yards. Thus, it indicates that the deceased Basari Sankararao was dragged for about 3 to 4 yards and it is hard-surface road. It can be seen from the evidence of PW3 that it is a metalled road. In such a case there is no possibility to form dragging marks or dragging injuries and therefore the contention raised on behalf of the accused that there is no injuries by dragging or otherwise do not render any assistance to their contention.

In our opinion, the view taken by the trial court was a reasonable one, as such the High Court was quite justified is not taking this to be a ground for doubting the truthfulness or otherwise of the prosecution case."

As such I do not find any substance in the contention of the learned counsel for the appellants.

17. The learned counsel for the appellants contended that there were shops at the place of incident and it was a daylight incident. The shops were open and people were gathering in the market. On the hue and cry of the complainant, may people came at the place of incident, but they have not been produced as witnesses. As such, the prosecution story is totally concocted. The prosecution should have adduced the evidence of other witness of the locality. The learned A.G.A. refuted the contention and contended that it is natural that when incident took place many people would have come at the scene of occurrence. It is not always necessary to multiply the evidence of the incident on the same point. It has to be seen what is the quality of the witnesses. It is the quality of the evidence and not the quantity, which is required. It is the evidence available on record is otherwise satisfactorily in nature and can be said to be trustworthy and increase in the number of witnesses cannot be turned up as the requirement to the case. The witnesses if they are participating in that event their evidence cannot be thrown outrightly on the ground that the witnesses of the locality have not been produced. The courts have to more carefully examine the evidence of interested witnesses. If the witnesses are trustworthy then it is not required that there should be a multiplicity of evidence.

18. It has been held in **Komal and others Vs. State of U.P. 2002 SCC (Cri) 1600** as under:-

"Learned counsel nest contended that though, according to the statements of witnesses, some villagers had arrived at the place of occurrence when the members of the prosecution party were begin assaulted and they intervened in the matter, none of them has been examined in the case on hand. In our view, non-examination of these witnesses by itself would not affect the veracity of the prosecution case when the evidence of PWs 2 and 4, the two injured eye witnesses who had received multiple injuries, has been found to the trustworthy and their evidence is corroborate by the informant PW 5 and supported by medical evidence as well as objective finding to the investigating Officer.

19. It has been further held in **Babu Ram vs. State of U.P.; 2002 SCC (Cri) 1400** as under:-

"It is was submitted by the learned counsel for the appellants that Ram Autar, an independent eye witness present at the scene of occurrence according to the prosecution case and a government servant has not been examined, and therefore, an adverse inference should be drawn against the prosecution. It is settled law that non-examination of any eye-witness cannot be pressed into service like a ritualistic formula for discarding the prosecution case with a stroke of the pen. An effort should be made at appreciating the worth of such evidence as has been adduced. If the evidence coming

from the mouth of the eye witnesses examined in the case is found to be trustworthy and worth being relied on so as to form a safe basis for recording a finding of guilt of the accused persons then non-examination of yet another witness who would have merely repeated the same story as has already been narrated by other reliable witnesses would not cause any dent or infirmity in the prosecution case. in the case at hand we additionally find from the testimony of Ashrafi Lal that in spite of being a government servant and not involved in local village disputes he is afraid of deposing against the accused persons and there is substance in the submission of the learned counsel for the State that Ram Autar if tendered in the witnesses box would have followed the same trace as was chosen by Ashrafi Lal P.W.3."

In view of the aforesaid discussion, the contention of the learned counsel for the appellant has no force.

20. The learned counsel for the appellant contended that the Investigating Officer has not taken the blood from the place of occurrence. The I.O. has not taken bloodstained clothes of the injured. The learned counsel for the appellants further contended that the appellants are entitled for acquitted on the same score. The learned A.G.A. refuted the contentions. It is well settled position of law that the testimony of the witnesses if found credible and cogent the defect on the part of the Investigating Officer cannot be taken into account. This is a remissness on the part of the

Investigating Officer, which does not help the appellants. It has been observed by the Hon'ble Supreme Court in **Dana Singh @ Shera and others Vs. State of Punjab 2004 (3) SCC P-654** that in the instant case, the High Court found several disturbing features which indicated how the investigating officer had made out a new case to save the accused persons and to implicate the complainant party. Hence, the High Court analyzed the evidence of the eye witnesses with due care and caution. On finding the said evidence to be credible, the High Court upheld the conviction recorded by the trial court. Before the Hon'ble Supreme Court, the accused appellants challenged the conviction on the grounds (1) that the police after through investigation had concluded that it was the complainant party which caused the death of the deceased (ii) that the pellets, wads and cartridges were not recovered from the spot, (iii) that the weapons of assault and the pellets were not sent for ballistic examination, (iv) that the blood stained earth was not sent for chemical examination (v) that many persons who could have thrown light on the incident had not been examined, and (vi) that the evidence being that of highly interested and inimical persons, should have been discarded. Dismissing the appeal, it was held by the Apex Court that even if the investigation is defective, that pales into significance when ocular testimony is found credible and cogent. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting and accused person solely on account of the defect. To do so would tantamount to playing into the hands of the investigation officer if the investigation designedly defective. It has been held in

Chhotu Vs. State and Maharashtra 1997 CRI.L.J. 4394 (SC):-

> *"That necessarily means that all of them were the most natural and probable witnesses to an incident that then took place near his house, notwithstanding the fact that they were not residents of that locality. It also requires to be mentioned here that if the Investigating Officer failed to seize the bloodstained clothes of PWs 3 and 8 and to promptly examine PW3, whose names as any eye witness was disclosed immediately after the incident, it only indicates remissness on his part but the evidence of PW3 and 8 was not in any way impaired thereby."*

21. The Apex Court has, while maintaining the conviction of the appellant in **Karnel Singh Vs. State of M.P. 1995 CRL.L.J. 4173**, observed:-

> *"Notwithstanding our unhappiness regarding the nature of investigation, have to consider whether the evidence on record, even on strict scrutiny, establishes the guilt. In case of defective investigation the Court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account to the defect; to do so would tantamount to playing into the hands of the Investigating Officer if the investigation is designedly defective. Any Investigating Officer, in fairness to the prosecutrix as well as the accused, would have recorded the statements of the two witnesses and would have drawn up a proper*

seizure-memo in regard to the Chaddi. That is the reason why we have said the investigation was slipshod and defective."

22. In view of the forgoing discussion I am of the view that if the Investigating Officer has not recovered the blood and has not taken into possession the clothes is of no avail to the defence and the contentions of the learned counsel for the appellant has no force.

23. The learned counsel for the appellants further contended that the witnesses of the incident were not present at the spot. In support of his contention, the learned counsel for the appellants has pointed out that the injured has admitted in his evidence that when Nasir Ahmad gave a knife blow then the witnesses i.e. PW3 Ramesh Chandra and PW4-Babli came at the spot. Ramesh Chandra (PW3) has stated that he was at Atta Chakki and Babli (PW-4) has also stated that he was on the way nearby the Atta Chakki. Ramesh Chandra (PW-3) was working in the Sugar Factory and his presence could not be relied upon. The learned A.G.A. refuted the contention and contended that the complainant has stated that they reached at the place of incident immediately after the incident. Witnesses have stated that they were sitting at the Atta Chakki, which is near to the place of occurrence. It was admitted that the incident took place at about 1PM. Ramesh Chandra (PW-3) was employed in the Sugar Factory and the launch/recess of the factory was 12PM to 1.30PM. PW3 has stated in his evidence that as soon as he saw the quarrel he and other witnesses started to reach at the place of incident from the Atta Chakki. As such, the witnesses saw the entire incident. The

contention of the learned counsel for the appellant is not tenable.

24. Lastly, the learned counsel for the appellants has submitted that it being a case of single injury on the chest of the injured, the trial court have convicted the accused under section 324 I.P.C. and sentenced him as indicated above. It was argued that only fine may be imposed on the appellant. Perusal of the record reveals that the incident took place on a trivial matter and the accused caused a knife injury on the right side of chest of the injured. Therefore, I do not agree with the learned counsel for the appellants that a leniency may be taken in awarding the sentence.

25. I have noticed that the appellant and the complainant were known to each other. The injured narrated the entire story. PW3 and PW4 have also corroborated the factum of incident. Medical report also corroborates the ocular testimony of the witnesses. The medical evidence shows that one knife injury in the shape of an incised would 2.5cm x 1cm was found on the right side of chest 5cm away from midline, 8.5cm below the nipple. The statement of Om Prakash (PW-2) has been further corroborated by Ramesh Chandra (PW-3) and Babli (PW-4). The matter was immediately reported to the police station. There was prompt FIR and there was no chance of any manipulation in the FIR. As such, the prosecution has proved its case beyond reasonable doubt.

26. In view of the above discussion I am of the view that the prosecution has established the guilt beyond any reasonable doubt against the appellants. I find that

the learned trial court has rightly convicted and sentenced the appellants and there is no infirmity in the judgment passed by the trial court. Hence, the appeal is dismissed and the conviction and sentence awarded by the Trail court against the appellant is confirmed.

27. Since, the appellant No.2-Ishrat Ali has died as per the verification report of the CJM concerned, hence the appeal stands abated against the appellant No.2-Ishrat Ali.

28. Let the lower court record be sent back to the court concerned for compliance. Compliance report be submitted within four months.

(J.C.S. Rawat, J)

Dated: 25.7.2005

LSR